Petition

NO. 81-526

FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1981

THOMAS J. JONES,
Plaintiff-Applicant

versus

PRUDENTIAL INSURANCE COMPANY
AND HOME INSURANCE COMPANY,
Defendants-Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGNINAL APPLICATION FOR
WRIT OF CERTIORARI
ON BEHALF OF THOMAS J. JONES

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QUESTIONS PRESENTED FOR REVIEW

I.

Does Louisiana have a paramount interest in protecting Louisiana residents who have been insured under policies by out-of-state companies? In determining the relationship between a Louisiana resident and an Oklahoma insurance company, should the law of the forum state apply where the policy, as applied to the insured, could have effect only in the forum state?

II.

In a diversity case, should the substantive law of the forum state apply, including the choice of law rules of the forum state?

III.

Where an insured person lives, works and pays the insurance company in Louisiana, does that insured person have a right to have his claim determined by Louisiana law?

IV.

Where an insured person's only contact with Oklahoma is being employed by a subsidiary of an Oklahoma corporation, should Oklahoma law determine his rights under an employee group accident policy, or should Louisiana law apply?

V.

Where Louisiana law would clearly allow recovery because of its legal definition of "accident", should Louisiana law be applied where coverage under the policy could only take effect in Louisiana because the employee could experience an employment related accident only in Louisiana?

VI.

Whether there exists a conflict between the Court of Appeals for the Fifth Circuit and the Court of Appeals for the Second Circuit as a result of the decision in this case and the decision rendered by the Second Circuit Court of Appeal in *Krauss v. Manhattan Life Insurance Company of New York*, 643 F2d 98 (2nd Cir., 1981)? The Second Circuit has held that even though a master group life insurance policy was issued and delivered in New York, the complaint's ac-

tion was governed by the law of Illinois, the domicile of the insured and beneficiary and location of the insured's employer.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THOMAS J. JONES,

Plaintiff-Applicant

versus

PRUDENTIAL INSURANCE COMPANY
AND HOME INSURANCE COMPANY,

Defendants-Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE
FIFTH CIRCUIT

ORIGINAL APPLICATION
FOR WRIT OF CERTIORARI
ON BEHALF OF THOMAS J. JONES

LIST OF PARTIES TO THIS PROCEEDING

1) THOMAS J. JONES
2) HOME INSURANCE COMPANY
3) PRUDENTIAL INSURANCE COMPANY

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOKED

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. Sec. 2101 and related Constitutional and statutory authorities. This application for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit seeks to reverse the judgment of the Court of Appeals dated June 10, 1981. The Court of Appeals denied the petition for rehearing on July 27, 1981, which was transmitted to the Clerk of the District Court on August 6, 1981.

STATEMENT OF THE CASE

This action was originally filed in the Louisiana District Court and removed to the United States District Court by the defendants, invoking the diversity jurisdiction of the United States District Court.

Thomas J. Jones had been employed for many years as a motorman for Loffland Brothers Company. Loffland Brothers is a subsidiary of Kendavis Industries International, Inc. The group accident policy was taken out by Kendavis Industries International, Inc., for itself and named subsidiaries, including

Jones' employer, Loffland Brothers.

The master policy was apparently issued by the Home Insurance Company to Loffland Brothers in Tulsa, Oklahoma.

On October 20, 1976, Mr. Jones "was employed by Loffland Brothers and while in the course and scope of his employment, he suffered a myocardial infarction which proved to be totally and permanently disabling, and that thereafter, he was the subject of extensive treatment, including coronary bypass surgery and extensive cardiovascular treatment". (Record-232).

Jones "was a member of the crew of Loffland Rig 154 from January, until October, 1976. Plaintiff worked, ate and slept on Rig 154. He had never had any heart trouble prior to Monday, October 18, 1976. On that date, the plaintiff began feeling bad during the afternoon and assumed that it was a case of indigestion. Earlier that morning, he had lifted 55 gallon oil drums, some full and other partially full. On the following day, Tuesday, at approximately 9:00 A.M., he had chest pains when he returned to his barge after placing some sills on another barge. The operation lasted approximately 20 minutes and weather was cool. . ." (Record-232, 233).

The District Court concluded that Oklahoma law was applicable and that "Under Oklahoma law, where the disease substantially contributes to the injury, the injury is not within coverage of an insurance policy which insured against injury by accidental means". (Record-233, 234).

The Court of Appeals held that there was no proof of delivery of the insurance policy in Louisiana or delivery in Louisiana of any certificate in connnection with the policy. The Court of Appeals held that the parties had not elected to be governed by Louisiana law and Oklahoma law should apply.

ARGUMENT

MAY IT PLEASE THE COURT:

Louisiana law is obviously more liberal in its definition of an "accident" than Oklahoma law. It has been consistently held that a heart attack is considered an accident within the meaning of Louisiana law if there is a causal connection between the accident and the claimant's disability.

This was an accident policy. Since the plaintiff was employed and worked only in Louisiana, an accident could have occurred only in Louisiana. Only

Kendavis Industries International, Inc., and its subsidiary, Loffland Brothers Company, Mr. Jones' employer, are named as insureds under the master policy.

Mr. Jones became a member of that group and the premiums were paid and collected in Louisiana. Mr. Jones was not named as an insured under the master policy and only a booklet describing the benefits under the group policy was actually delivered to Mr. Jones. A Copy of this booklet appears in the record and was filed with the Motion for Summary Judgment. Mr. Jones had no connection with Oklahoma except that he was employed by a subsidiary of an Oklahoma corporation.

Louisiana's interest in protecting Louisiana residents who have been insured under policies by out of state companies and in regulating the relationship between a Louisiana resident and an Oklahoma insurance company far outweighs Oklahoma's interest in regulating the relationship between an Oklahoma insurance company and Louisiana residents.

If Louisiana law is applicable, Jones is entitled to recover. If Oklahoma law is applicable, Jones probably is not entitled to recover.

CHOICE OF LAW AND CONFLICT OF LAW

Choice of law and conflict of law issues are common in actions where a group policy of insurance is issued by a foreign insurer. Although a policy may be delivered in a foreign state, coverage is not effective until there is delivery of the individual certificate evidencing insurance coverage of a member of the insurance group. The law most commonly applied when such issues are before the Court may be summarized as follows:

> "While a feature to show that a certificate under a group policy, or that the master policy, were made or to have effect in the forum would prevent that law applying, the majority of Courts hold that even though the master policy is governed by a different law, as respects the employer and insurer, as far as the individual certificates are concerned, they take effect upon delivery and are, therefore, usually governed by the forum. And the law of the forum has been held to apply even where there was no proof that such certificates were delivered in that state. Furthermore, such result has been followed although the certificate was actually shown to have been delivered in another state. Of course, a contract cannot be regarded as made in the forum where it was delivered in another state and the insured moved to the forum after the insurance terminated."
>
> Appleman, *Insurance Law and Practice*, Section 1607 and *Harmon v. Lumbermen's Mutual Insurance Company*, 164 So2d 387 (La. App. 2nd Cir., 1964).

Thomas J. Jones was employed in Louisiana or outer continental lands which adjoin Louisiana. He was not hired nor did he ever work in Oklahoma.

THOMAS J. JONES IS ENTITLED TO RECOVER IF LOUISIANA LAW IS APPLICABLE

It is apparent that if Oklahoma law is applicable, that Jones could not recover; however, if Louisiana law is applicable, it is equally apparent that Jones could recover.

Oklahoma law provides that where a disease substantially contributes to the injury, the injury is not within coverage of an insurance policy which insures against injury by accidental means. *Bewley v. American Home Assurance Company,* 450 F.2d 1079 (1971).

Louisiana law and the law of the United States Fifth Circuit Court of Appeals is obviously more liberal in its definition of an accident and it has been consistently held that a heart attack is a considered an accident within the meaning of Louisiana law if there is a causal connection between the accident and the claimant's disability. *Wood v. Amstar Corp.,* 380 So.2d 735 (La. App. 4th Cir., 1980); *J. T. Joyner v. Houston General Insurance Company,* 368 So.2d 1149

(La. App. 3rd Cir., 1979); *Guidry v. Serigny*, 378 So.2d 938 (La. 1979, rehearing denied 1/28/80); and *Dupre v. North-West Insurance Co.*, 372 So.2d 624 (La.App.1st Cir., 1979).

It is obvious that the policy was to have effect only in Louisiana. Thomas J. Jones was employed in Louisiana, the premiums paid in Louisiana, the certificate delivered in Louisiana, and the accident occurred in Louisiana. If Louisiana law is applicable, the cases cited herein as well as the following language conclusively provides coverage:

> "...if, under the peculiar...condition of health of an individual upon whom it is inflicted, such injury appears as the active, efficient cause that sets in motion agencies that result in death, without the intervention of any other independent force, then it should be regarded as the sole and proximate cause of death. The fact that the physicial infirmity of the victim may be a necessary condition to the result does not deprive the injury of its distinction of the sole producing cause."

Richard v. Southern Farm Bureau Casualty Insurance Company (La.App. 3rd Cir., 1961);

Lipscombe v. Equitable Life Assurance Society of the United States, 205 La. 738, 18 So.2d 167 (1944).

Louisiana Law Is Applicable

The Louisiana Legislature has solemnly ex-

pressed the public policy that insurance contracts delivered or issued for delivery in this state covering residents, or to be performed in this state cannot contain any condition requiring to be construed according to the laws of any other state.

La. R.S. 22:629 provides that:

> "A. No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state, shall contain any condition, stipulation, or agreement:
>
> (1) Requiring it to be construed according to the laws of any other state or country except as necessary to meet the requirements of the motor vehicle financial responsibility laws of such other state or country; or
>
> (2) Depriving the courts of this state of the jurisdiction of action against the insurer; or."

In *Casey v. Prudential Insurance Company of America*, 360 So.2d 1386 (La. App. 3rd Cir., 1978), the Louisiana appellate Court held that Louisiana law, rather than Missouri law was applicable where an insured under a group life policy was a Louisiana resi-

dent and employed within Louisiana although the policy was executed in Missouri and the premiums were paid to the insurer's agent in Missouri. *This was squarely held by the appellate court although the policy provided that Missouri law would apply.*

This firm expression of legislative will has been reinforced without interrupton by the Louisiana Courts. Most recently in *Johnson v. Nationwide Life Insurance Co.*, 388 So.2d 464 (La.App.2nd Cir., 1980), the Louisiana Courts reaffirmed the Louisiana public policy in protecting Louisiana residents who have been issued policies by out of state companies. Where there is a choice of law analysis, Louisiana law has consistently held to be applicable because Louisiana has a paramount interest in regulating the relationship between Louisiana residents and insurance companies from other states.

THE OPINION OF THE COURT OF APPEALS FOR THE FIFTH CIRCUIT CONFLICTS WITH THE COURT OF APPEALS FOR THE SECOND CIRCUIT

The opinion of the Fifth Circuit, Court of Appeal cites the Restatement Second of Conflicts of Law

including Section 192 and *Pound v. Insurance Co. of North America*, 439 F2d 1059, (10th Cir., 1971).

The Second Circuit, Court of Appeal in 1980, decided the case of *Krauss v. Manhatten Life Insurance Co. of New York*, 643 F2d 98 (2nd Cir. 1980), rehearing denied April 8, 1981. In *Krauss, supra*, the Second Circuit held that even though a master group life insurance policy was issued and delivered in New York, the suit was governed by the law of Illinois, the domicile of the insured and beneficiary and location of the insured's employer.

The Second Circuit further citied the well established principles of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), which held that in a diversity case a Federal Court must apply the substantive law of the forum state including its choice of law rules.

CONCLUSION

There exists a conflict between the Court of Appeals for the Second Circuit and the Court of Appeals for the Fifth Circuit. This conflict relates to the law applicable to an insured under a group policy where the master policy has been legally delivered in a state other than where insured is domiciled.

The effect of the decision of the Court of Appeals for the Fifth Circuit is to discriminate against a Louisiana resident and subject him to jurisdiction of another forum.

The applicant is entitled to have his rights determined under Louisiana law. Louisiana is the forum state and its substantive law should apply.

RESPECTFULLY SUBMITTED,
EDWARDS, STEFANSKI & BAROUSSE

By: _____
HOMER ED BAROUSSE, JR.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Application for Writ of Certiorari has been served on opposing counsel of record by depositing same in the United States Mail, postage prepaid, properly addressed as follows:

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Honorable Judges of the
United States Court of Appeals
for the Fifth Circuit
c/o Hon. Gilbert F. Ganucheau
Clerk of Court
United States Court of Appeals
for the Fifth Circuit
600 Camp Street
New Orleans, Louisiana 70130

Crowley Louisiana, this 14th day of September, 1981.

HOMER ED BAROUSSE, JR.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

THOMAS J. JONES

VS. CIVIL ACTION NUMBER 78-1112
PRUDENTIAL INSURANCE SECTION S
COMPANY,
ET AL

Filed August 20, 1980

RULING ON MOTION FOR SUMMARY JUDGMENT

This matter involves Motions for Summary Judgment by the plaintiff, Thomas J. Jones, and the two (2) defendants, The Home Insurance Company and Prudential Insurance Company.

The plaintiff alleges that on October 20, 1976, he was employed by Loffland Brothers and while in the cousre and scope of his employment, he suffered a myocardial infarction which proved to be totally and permanently disabling, and that thereafter, he was the subject of extensive treatment, including coronary bypass surgery and extensive cardiovascular treatment.

In the above captioned lawsuit, the plaintiff seeks benefits under the insurance policies issued by Prudential Insurance Company (major medical) and The Home Insurance Company (group accident policy).

The deposition of the plaintiff reveals that he was a member of the crew of Loffland Rig 154 from January, until October, 1976. Plaintiff worked, ate and slept on Rig 154. He had never had any heart trouble prior to Monday, October 18, 1976. On that date, the plaintiff began feeling bad during the afternoon and assumed that it was a case of indigestion. Earlier that morning, he had lifted 55 gallon oil drums, some full and others partially full. On the following day, Tuesday, at approximately 9:00 a.m., he had chest pains when he returned to his barge after placing some sills on another barge. The operation lasted approximately 20 minutes and the weather was cool. There is nothing in the deposition to indicate that there was an excessive amount of exertion in connection with plaintiff's work on Tuesday morning. After noting the chest pains, the plaintiff left the job and drove to Crowley, Louisiana, where he was examined by Dr. Harmon, and thereafter, the plaintiff received extensive medical treatment and surgery by numerous doctors at several different hospitals.

The plaintiff's medical condition may be diagnosed as follows: Total occlusion of the right coronary artery and total occlusion of the left anterior descending artery with critical narrowing involving the circumflex artery and there was diffuse myocardial hypokineses. In the Court's opinion, the medical indicates that the heart attack, at least in part, resulted from the severe coronary artery disease.

The plaintiff claims that he is entitled to a summary judgment by this Court as a matter of law, because the heart attack was the result of an injury caused by an accident under Louisiana jurisprudence.

The Home Insurance Company contends that under its policy, the law of Oklahoma is applicable rather than the law of Louisiana. For insurance contracts, Louisiana recognizes the law of the state where the policy was delivered as the *lex loci contractus*. *Pendleton v. Aetna Life Insurance Company*, 320 F. Supp. 425 (1970). The policy in the instant case was issued and delivered by The Home Insurance Company to Loffland Brothers, a division of Kendavis Industries International, Inc., in Tulsa, Oklahoma. The producer of the policy, Harlan Agents and Brokers, Inc., is also located in Tulsa, Oklahoma. Under Oklahoma law, where the disease substantially contributes to the injury, the injury is not within

coverage of an insurance policy which insures against injury by accidental means. *Bewley v. American Home Assurance Company*, 450 F.2d 1079 (1971). In *Bewley*, the definition of "injury" in the policy in question was as follows:

> " ' "injury" whenever used in this policy means bodily injury caused by an accident occurring while this policy is in force * * * and *resulting directly and independently of all other causes* in loss covered by this policy.' "

In the instant case, under the insurance agreement, it provides:

> "* * *'Injury' means accidental bodily injury sustained by a Covered Person during the term of this Policy which results directly and independently of all other causes in a loss arising out of the hazards defined on page 2-B 'Description of Hazards'."

In *Bewley*, the Court stated at Page 1080:

> "The applicable law is that of Oklahoma, and the Supreme Court of that state has on numerous occasions construed language such as that which appears in the instant policies. Generally speaking, Oklahoma has followed the generally accepted rule that where the insured is afflicted with a disease or infirmity which substantially contributes to death or injury, the death or injury is not within the coverage of a policy which insures against death or bodily injury by accidental means, direct and independent of other causes.* * *"

Also, the policy issued by the Home Insurance Company, under Exclusions, Page 2, provides that:

> "This Policy does not cover any loss caused by, contributed to or resulting from:. . . (4) illness, disease, pregnancy. . ."

If Louisiana law were applicable, the results might be different. (See *Richard v. Southern Farm Bureau Casualty Insurance Company*, 128 So.2d 806)

It is clear that under the law of Oklahoma, which is applicable in regard to The Home Insurance Company policy, an accident, as defined in the policy, did not occur in the instant case, and the Court will grant a summary judgment in favor of The Home Insurance Company.

The medical policy issued by Prudential Insurance Company to Kendavis Industries International, Inc. provides under the section entitled "Expenses Not Covered by the Group Policy":

> "The insurance described herein shall not be applicable to expense incurred or loss sustained:
>
> 3. Resulting from additional bodily injury arising out of or in the course of employment, or from a disease compensable under any workmen's compensation or occupational disease act or law."

It is clear from the facts before the Court that the plaintiff was entitled to receive and did receive maintenance and cure. The plaintiff entered into a Jones Act settlement on October 27, 1977, at which time, medical expenses totaling THIRTEEN THOUSAND FOUR HUNDRED NINETY-EIGHT AND $^{27}/_{100}$ ($13,498.27) DOLLARS had been paid under the Jones Act and General Maritime Law. The duty of a shipowner to provide his seaman maintenance and cure is imposed by the law.

> "The duty of a shipowner to provide his seaman maintenance and cure is '(a)mong the most pervasive incidents of the responsibility anciently imposed upon a shipowner * * *.' Aguilar v. Standard Oil Co., 1943, 318 U.S. 724, 730, 63 S.Ct. 930, 933, 87 L.Ed 1107. The duty is 'imposed by the law itself as one annexed to the employment (of the seaman by this shipowner). * * * (I)t is (contractual) in the sense that it has its source in a relation which is contractual in origin, but, given the relation, no agreement is competent to abrogate the incident.' Cortes v. Baltimore Insular Line 1932, 287 U.S. 367, 371, 53 S.Ct. 173, 174, 77 L.Ed. 368. * * *" (*Richardson v. St. Charles - St. John Baptist Bridge and Ferry Au.*, 284 F. Supp. 709 (1968).

Therefore, it is clear that the loss sustained herein is from a disease compensable under law, and that the policy issued by Prudential Insurance Company would provide no coverage under any applicable law, and that the Motion for Summary Judgment filed

by Prudential Insurance Company herein is granted.

The Motion for Summary Judgment filed by the plaintiff, Thomas J. Jones, is denied.

The attorneys will submit a judgment in conformity with Rule 54(b).

Opelousas, Louisiana, August 20, 1980.

/S/ John M. Shaw

John M. Shaw
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT A

DO NOT PUBLISH

No. 80-3925
Summary Calendar

THOMAS J. JONES,
Plaintiff-Appellant,

v.

PRUDENTIAL INSURANCE COMPANY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

(June 10, 1981)

Before CHARLES CLARK, REAVLEY and WILLIAMS, Circuit Judges.

PER CURIAM:

Appellant Thomas J. Jones was a member of the crew of Loffland Rig 154, employed by Loffland Brothers Company. On October 18, 1976, he lifted

some fifty-five gallon oil drums and later in the day began to feel as if he had a bad case of indigestion. He ate and slept on the rig that night, which was a regular feature of his employment. The next morning he worked at placing some sills on another barge and when he returned to his own barge he had chest pains. Plaintiff then left his job and drove to a doctor for an examination. It was determined that he had suffered a myocardial infarction. After extensive treatment and surgery, he alleges that he, nevertheless, is totally and permanently disabled. The district court's finding that the heart attack resulted at least in part from pre-existing severe coronary artery disease is not disputed on this appeal.

Appellant sought recovery under a medical and hospitalization policy issued by Prudential Insurance Company to the parent company of his employer, Kendavis Industries International, Inc. That policy contained the usual provision that it did not apply to an injury or disease arising out of or in the course of employment. His heart attack was recognized as an injury or disease arising out of or in the course of employment and he entered into a Jones Act settlement with his employer's Jones Act insurer for maintenance and cure in the total sum of $13,498.27. Under these circumstances, the district court awarded summary judgment for Prudential Insurance Com-

pany, holding that under this medical policy it was not liable to plaintiff Jones.

The decision of the district court on this insurance claim is correct. The policy clearly in terms was to serve as an indemnity for injury or illness not related to employment. While there was pre-existing coronary disease involved in the heart attack, this was a compensable injury and illness under the Jones Act as evidenced by the maintenance and cure settlement. The policy itself provided that there was no coverage for injury incurred in course of employment or disease compensable under workers compensation. It went on to provide that the insurance was designed to help persons meet the cost of disease and injury and it was "not intended that you receive greater benefits than the actual medical expenses incurred". It also provided that its benefits would be coordinated with any other benefits received. Since the Jones Act settlement takes care of his full maintenance and cure benefits, there is no responsibility under the Prudential policy.

Appellant also claims coverage and benefits under a group accident policy taken out by Kendavis International Inc. for itself and named subsidiaries, including appellant's employer, Loffland Brothers. The key issue is whether this heart attack was an acci-

dent within the meaning of the policy. The United States District Court for the Western District of Louisiana found that the heart attack was not an accidental injury within the policy terms under the law of Oklahoma which was found to govern. Under Oklahoma law where a disease substantially contributes to an injury the injury is not within the coverage of an accidental injury policy. *Bewley v. American Home Assurance Co.*, 450 F.2d 1079 (10th Cir. 1971); *Minyen v. American Home*, 443 F.2d 788 (10th Cir. 1971).

Appellant does not dispute on this appeal the summary judgment in favor of defendant if the Oklahoma law is found to be applicable. Appellant's claim is the law of Louisiana should be applied and that the law of Louisiana in defining accidential injury does not defeat recovery under an accident insurance policy even though existing disease was a substantial contributing cause. *Guidry v. Serigny*, 378 So.2d 938 (La. 1979); *Wood v. Amstar Corp.*, 380 So.2d 735 (La.App.4th Cir. 1980). Appellant asserts that Louisiana law applies because he was employed in Louisiana, he paid his premiums in Louisiana, and the accident occurred in Louisiana. He also asserts in his brief that an insurance certificate of coverage was delivered in Louisiana, but there is nothing in the record to show that any certificate was delivered in the state.

Appellant relies on the provision of the Louisiana Code, La.R.S. 22:629, which states:

> A. No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state, shall contain any condition, stipulation, or agreement:
>
> (1) Requiring it to be construed according to the laws of any other state or country except as necessary to meet the requirements of the motor vehicle financial responsibility laws of such other state or country; or
>
> (2) Depriving the courts of this state of the jurisdiction of action against the insurer; or . . .

The district court found that the law of Oklahoma was applicable because the master group insurance policy was written by a broker in Tulsa, Oklahoma, and was delivered to the Loffland Company in Tulsa, Oklahoma. Because of appellant's preexisting disease as a substantial contributing cause to the accidential injury under the terms of the policy, the district court granted summary judgment for defendant Home Insurance Company. We affirm.

Group insurance contracts, as a relatively new development in the law, have created serious issues concerning what law is applicable when members of

the insured group reside in, become ill in, or are injured in a number of different states. The law is not well developed on these issues, but in general it follows Restatement Second Conflicts, § 192. That section deals with life insurance contracts, but recognizes in Comment "1" that disability insurance contracts are to be governed by the same choice-of-law rules as life insurance contracts. Then Comment "h" under the same provision provides as follows:

> h.*Group life insurance.* In the case of group life insurance, rights against the insurer are usually governed by the law which governs the master policy. This is because it is desirable that each individual insured should enjoy the same privileges and protection. So where an employer arranges for group life insurance for its employees, the rights of a particular employee against the insurer will usually be determined, in the absence of an effective choice-of-law clause and at least as to most issues, not by the local law of the state where the employee was domiciled and received his certificate but rather by the law governing the master policy with respect to that issue. This will usually be the state where the employer has his principal place of business.
>
> Choice-of-law provisions contained in group life insurance policies are more likely to be given effect than in the case of ordinary life insurance. This is because the organization or indivdual which procures the master policy will usually have a stronger bargaining position than an individual insured with the result that the choice-of-law provision is less likely to have a "take-it-or-leave-it" character.

The obvious purpose of this rule is to achieve a measure of certainty and uniformity in the interpretation and application of a single insurance policy which is applicable to many different persons in a number of different state jurisdictions.

Carefully considered support for this rule is found in *Pound v. Insurance Co. of North America*, 439 F.2d 1059, 1063 (10th Cir. 1971), applying the law of the state where the master group accident policy was delivered even though an individual certificate of insurance had been delivered to the insured in the state of his residence.

It is also clear that the parties may make a specific choice of applicable law, providing that the law of the state of the injured employee will apply, *Casey v. Prudential Ins. Co. of America*, 360 So.2d 1386 (La.Ct.App.3d Cir.1978) (the parties stipulated the existence of a specific local policy between the local employer and the injured employee in Louisiana with a certificate issued directly to the injured employee) or a finding that the law of the particular state in which the injured lives provides in group policies for coverage under local law. *Nelson v. Aetna Life Ins. Co.*, 359 F. Supp. 271 (W.D.Mo. 1973). But no such choice-of-law stipulation nor state law exception is present in this case.

Lacking any proof of delivery of the insurance policy in Louisiana or delivery in Louisiana of any certificate in connection with the policy, lacking any agreement between the parties that Louisiana law applies, and lacking any specific Louisiana law which provides for the application of local law in situations where there is no local delivery of an insurance policy, the district court found that the Louisiana law did not apply in this case. Recognizing the great deference which this court grants a district judge in interpreting and applying the local law of the state in which he or she sits, *Black v. Fidelity & Guar. Ins. Underwriters*, 582 F.2d 984, 987 (5th Cir. 1978), we affirm the summary judgment in favor of Home Insurance Company.

AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

filed September 4,1980

THOMAS J. JONES
VERSUS C.A. NO. 78-1112 SECTION S
PRUDENTIAL INSURANCE COMPANY, ET AL

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RULE 54(b) JUDGMENT

On August 19, 1980, this case came on for hearing on motions for summary judgment filed by the plaintiff, THOMAS J. JONES, and the two defendants, HOME INSURANCE COMPANY and PRUDENTIAL INSURANCE COMPANY.

The Court, after considering the motions, pleadings, exhibits, depositions, affidavits, stipulated evidence, and oral arguments of counsel, denies plaintiff's motion for summary judgment, and grants the motions for summary judgment filed by PRUDENTIAL INSURANCE COMPANY and the HOME INSURANCE COMPANY.

In view of the above and foregoing, it is ordered, adjudged and decreed tht all claims of complainant,

THOMAS J. JONES, against PRUDENTIAL INSURANCE COMPANY and HOME INSURANCE COMPANY are dismissed with prejudice and at the costs of complainant, THOMAS J. JONES.

This 4th day of September, 1980 at Opelousas, Louisiana.

/S/ Illegible

DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 80-3925

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filed July 27, 1981

THOMAS J. JONES,
Plaintiff-Appellant,

versus

PRUDENTIAL INSURANCE CO., ET. AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

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ON PETITION FOR REHEARING

(July 27, 1981)

Before CLARK, REAVLEY and WILLIAMS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:
/S/ JERRE S. WILLIAMS

United States Circuit Judge